

§ 385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?

If the FMCSA conducts a compliance review on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.

§ 385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, the FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The initial refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions in 49 U.S.C. 521(b)(2)(A).

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

Subpart E—Hazardous Materials Safety Permits

SOURCE: 69 FR 39367, June 30, 2004, unless otherwise noted.

§ 385.401 What is the purpose and scope of this subpart?

(a) This subpart contains the requirements for obtaining and maintaining a safety permit to transport certain hazardous materials. No one may transport the materials listed in § 385.403 without a safety permit required by this subpart.

(b) This subpart includes:

(1) Definitions of terms used in this subpart;

(2) The list of hazardous materials that require a safety permit if transported in commerce;

(3) The requirements and procedures a carrier must follow in order to be issued a safety permit and maintain a safety permit;

(4) The procedures for a motor carrier to follow to initiate an administrative review of a denial, suspension, or revocation of a safety permit.

§ 385.402 What definitions are used in this subpart?

(a) The definitions in parts 390 and 385 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

Hazardous material has the same meaning as under § 171.8 of this title: A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under Sec. 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see § 172.101 of this title), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this title.

Hazmat employee has the same meaning as under § 171.8 of this title: A person who is employed by a hazmat employer as defined under § 171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle that transports hazardous materials in commerce. This term includes an individual who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;

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(3) Prepares hazardous materials for transportation;

(4) Is responsible for the safe transportation of hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85 percent or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403.

Shipment means the offering or loading of hazardous materials at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 385.403 Who must hold a safety permit?

After the date following January 1, 2005, that a motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in § 390.19(a) of this chapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this title;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

(c) More than one liter (1.08 quarts) per package of a "material poisonous by inhalation," as defined in § 171.8 of this title, that meets the criteria for "hazard zone A," as specified in § 173.116(a) or § 173.133(a) of this title;

(d) A "material poisonous by inhalation," as defined in § 171.8 of this title, that meets the criteria for "hazard zone B," as specified in § 173.116(a) or § 173.133(a) of this title in a bulk packaging (capacity greater than 450 L [119 gallons]);

(e) A "material poisonous by inhalation," as defined in § 171.8 of this title, that meets the criteria for "hazard

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zone C," or "hazard zone D," as specified in § 173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or

(f) A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

§ 385.405 How does a motor carrier apply for a safety permit?

(a) *Application form(s)*. To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS-150B, Combined Motor Carrier Identification Report and HM Permit Application.

(1) The Form MCS-150B will also satisfy the requirements for obtaining and renewing a DOT identification number; there is no need to complete Form MCS-150, Motor Carrier Identification Report.

(2) A new entrant, as defined in § 385.3, must also submit Form MCS-150A, Safety Certification for Application (Safety Certification for Application for USDOT Number) (see subpart D of this part).

(b) *Where to get forms and instructions*. The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the Internet at <http://www.fmcsa.dot.gov>, or by contacting FMCSA at Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave., SE., Washington, DC 20590-0001, Telephone: 1-800-832-5660.

(c) *Signature and certification*. An official of the motor carrier must sign and certify that the information is correct on each form the motor carrier submits.

(d) *Updating information on Form MCS-150B*. A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS-150B within 30 days of the change. The motor carrier must use